

**Remarks & Arguments:**

**Claim Rejection – 35 USC § 102**

**A person shall be entitled to a patent unless-**

**(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent for patent by another filed in the United States before the invention by the applicant for patent, except that an international application file under the treaty defined in section 351(a) shall have the effect for purposes of the subsection of an application file in the United States only if the international application designated the United States and was published under Article 21 (2) of such treaty in the English language.**

Claims 46 – 90 are rejected under USC 102(e) as being anticipated by Ellis, U.S. Patent No. 6,661, 890.

Regarding claims 46 – 90, Ellis discloses an apparatus and method for a wireless device (see col. 5, Lines 35 – 40) for prestored bypass dialing (i.e., to reach a bypass carrier having a lower rate, see col. 1, line 44 – 65), wherein a CPU is able to compare at least the beginning four digits of the input telephone call number to make determination whether the call is a standard long distance call or a “special” telephone communication network function such as “1-800”

(col. 7, line 39 – 45, col. 8, line 51 – 65 and col. 9, lines 13 – 47) (read on method for collecting the digits of dialed phone number by monitoring the keypad of a wireless device to ***detect electronic signals*** indicating which button were pressed; method for storing to memory the digits corresponding to the buttons that were pressed on the wireless device keypad; method for determining whether an outgoing call from a wireless device is a discount call based on analysis of the leading dialed digits of said call; method for performing said analysis at the wireless device; method for transparently dialing the phone number for a discount telephone service provider and the digits corresponding to said outgoing long distance call).

**Cited Material Used In Patent Defense:**

In the following sited court cases it is stated that to challenge a patent as being anticipation it must be ordinarily shown that each element of the claim in issue is found in a prior patent publication, either expressly or under the principle inherency.

**HYBRITECH INCORPORATED, Appellant, V. MONOCLONAL ANTIBODIES, INC., Appellee** Appeal No. 86-531 UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT 802 F.2d 1367; 1986 U.S. App. LEXIS 20347; 231 U.S.P.Q. (BNA) 81

App. No. 09/901,600 - Inventor: Oliver W. Gamble  
Application Filed On: July 11, 2001  
Examiner: Joy K. Contee - Art Unit 2686

[HN9] It is axiomatic that for prior art to anticipate under 35 U.S.C.S. § 102 it has to meet every element of the claimed invention, and that such a determination is one of fact.

**TYLER REFRIGERATION, Appellant, v. KYSOR INDUSTRIAL**

**CORPORATION, Appellee**

**No. 85-1872 UNITED STATES COURT OF APPEALS FOR THE FEDERAL  
CIRCUIT 777 F.2d 687; 1985 U.S. App. LEXIS 15323; 227 U.S.P.Q. (BNA) 845**

*[HN1] It is settled that a party asserting that a patent claim is anticipated must demonstrate, among other things, identity of invention. Further, identity of invention is a question of fact and the challenger must ordinarily show that each element of the claim in issue is found in a prior patent or publication, either expressly or under principles of inherency.*

**Lewmar Marine, Inc., Appellant, v. Barent, Inc. and Barlow Marine, Ltd.,**

**Appellees Nos. 86-1412, 86-1619 UNITED STATES COURT OF APPEALS**

**FOR THE FEDERAL CIRCUIT 827 F.2d 744; 1987 U.S. App. LEXIS 496; 3**

**U.S.P.Q.2D (BNA) 1766**

*[HN1] Anticipation under 35 U.S.C.S. § 102 requires the presence in a single prior art disclosure of each and every element of a claimed invention.*

*[HN2] Under the current statute, 35 U.S.C.S. § 102, "anticipation" does not carry the same meaning as before and the "classic test" of anticipation must be*

*modified to provide: that which would literally infringe if later in time anticipates if earlier than the date of invention.*

**MPEP 2112 Requirements of Rejection Based on Inherency; Burden of Proof [R-3] - 2100 Patentability**

**2112 Requirements of Rejection Based on Inherency; Burden of Proof [R-3]**

**IV. EXAMINER MUST PROVIDE RATIONALE OR EVIDENCE TENDING  
TO SHOW INHERENCY**

*The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. In re Rijckaert, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993) (reversed rejection because inherency was based on what would result due to optimization of conditions, not what was necessarily present in the prior art); In re Oelrich, 666 F.2d 578, 581-82, 212 USPQ 323, 326 (CCPA 1981). "To establish inherency, the extrinsic evidence 'must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.' " In re Robertson, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999) (citations omitted) (The claims were drawn to a*

*disposable diaper having three fastening elements. The reference disclosed two fastening elements that could perform the same function as the three fastening elements in the claims. The court construed the claims to require three separate elements and held that the reference did not disclose a separate third fastening element, either expressly or inherently.). >Also, "[a]n invitation to investigate is not an inherent disclosure" where a prior art reference "discloses no more than a broad genus of potential applications of its discoveries." Metabolite Labs., Inc. v. Lab. Corp. of Am. Holdings, 370 F.3d 1354, 1367, 71 USPQ2d 1081, 1091 (Fed. Cir. 2004) (explaining that "[a] prior art reference that discloses a genus still does not inherently disclose all species within that broad category" but must be examined to see if a disclosure of the claimed species has been made or whether the prior art reference merely invites further experimentation to find the species.<*

*"In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art." Ex parte Levy, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original) (Applicant's invention was directed to a biaxially oriented, flexible dilation catheter balloon (a tube which expands upon inflation) used, for example, in clearing the blood vessels of heart patients). The examiner applied a U.S. patent to Schjeldahl which disclosed injection molding a tubular*

*preform and then injecting air into the preform to expand it against a mold (blow molding). The reference did not directly state that the end product balloon was biaxially oriented. It did disclose that the balloon was "formed from a thin flexible inelastic, high tensile strength, biaxially oriented synthetic plastic material." Id. at 1462 (emphasis in original). The examiner argued that Schjeldahl's balloon was inherently biaxially oriented. The Board reversed on the basis that the examiner did not provide objective evidence or cogent technical reasoning to support the conclusion of inherency.).*

In *In re Schreiber*, 128 F.3d 1473, 44 USPQ2d 1429 (Fed. Cir. 1997), the court affirmed a finding that a prior patent to a conical spout used primarily to dispense oil from an oil can inherently performed the functions recited in applicant's claim to a conical container top for dispensing popped popcorn. The examiner had asserted inherency based on the structural similarity between the patented spout and applicant's disclosed top, i.e., both structures had the same general shape. The court stated:

[N]othing in Schreiber's [applicant's] claim suggests that Schreiber's container is of a 'different shape' than Harz's [patent]. In fact, [ ] an embodiment according to Harz (Fig. 5) and the embodiment depicted in Fig. 1 of Schreiber's application have the same general shape. For that reason, the examiner was justified in concluding that the opening of a conically shaped top as disclosed by Harz is inherently of a size sufficient

to 'allow [ ] several kernels of popped popcorn to pass through at the same time' and that the taper of Harz's conically shaped top is inherently of such a shape 'as to by itself jam up the popped popcorn before the end of the cone and permit the dispensing of only a few kernels at a shake of a package when the top is mounted to the container.' The examiner therefore correctly found that Harz established a *prima facie* case of anticipation.

### Argument

Ellis's patent cannot be said to anticipate the Applicant's patent, because it lacks two key components: it does not deal with cellular phones or wireless devices in its teaching. Ellis's patent also lacks any mention of monitoring the electronic signal of the internal circuitry of the phone, he teaches on dial tones (Col. 8, line 55 – line 65). Claims 46 – 90 are allowable.

Examiner's citation "Regarding claims 46 – 90, Ellis discloses an apparatus and method for a **wireless device** (see col. 5, Lines 35 – 40)" is unsupported because there is no mention of a wireless device in the entire patent. The text in the citation speaks of a wireless telecommunication network only, and a network is not a wireless device. Claims 46 – 90 are allowable.

Examiner's citation "for prestored bypass dialing (i.e., to reach a bypass carrier having a lower rate, see col. 1, line 44 – 65)" refers to a wired telephone is clearly indicated by the fact that all of the flow-charts (Figure 4a "Hook Switch

Down" & "Hook Switch Up", Figure 4b "Hook Switch Down" & "Hook Switch Up" & "Tone Generator", Figure 4C "Hook Switch Down", "Hook Switch Up", and "Tone Generator"), diagrams (Figure 1, Figure 2, Figure 3), and specifications (Col. 7, line 4 – line 8, Col. 7, line 59 – line 60) all refer to a wired phone: handsets, cradle, and on & off hook. Claims 46 – 90 are allowable.

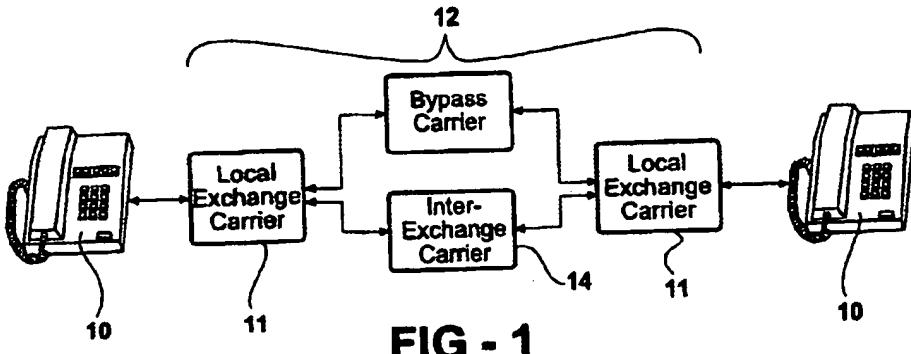
Examiner's citation "wherein a CPU is able to compare at least the beginning four digits of the input telephone call number to make determination whether the call is a standard long distance call or a "special" telephone communication network function such as "1-800" (col. 7, line 39 – 45, col. 8, line 51 – 65 and col. 9, lines 13 – 47) (read on method for collecting the digits of dialed phone number by monitoring the keypad of a wireless device to **detect electronic signals** indicating which button were pressed; method for storing to memory the digits corresponding to the buttons that were pressed on the wireless device keypad; method for determining whether an outgoing call from a wireless device is a discount call based on analysis of the leading dialed digits of said call; method for performing said analysis at the wireless device; method for transparently dialing the phone number for a discount telephone service provider and the digits corresponding to said outgoing long distance call).", is unsupported because there is no mention of a wireless device in the entire patent. The term "electronic signals" does not appear anywhere in the patent, therefore no teaching can be said to be offered up by Ellis. Claims 46 – 90 are allowable.

Ellis patent (U.S. 6,661,890) is not involved in routing calls from a wireless

device through a discount service provider. Ellis 's invention only mentions cellular and wireless device one time in an opening paragraph where he is discussing the various types of devices that can communicate with a line phone using Ellis's invention. Ellis is talking about figure 1, a typical network depicting wired telephones, in communication with one another. It goes on to state "the network may comprise a conventional wire telephone, as well as wireless, cellular, and other forms of telecommunication network". Ellis's patent does not mention installing the device in a wireless device. The components of Ellis's invention all points to it being strictly a wired telephone apparatus.

There is not one mention of a wireless phone, wireless device, cellular phone, or cellular device in the entire patent. There is no mention of wireless or cellular devices in either the specifications or the claims.

In all of the diagrams provided in Ellis's patent, there are distinct features of a line phone, Figure 4A line 50 "Off-Hook", Figure 4B, Figure 4C, pictorially Figure 1 & Figure 2 or a schematically depiction Figure 3, or mention of a dial tone Figure 4B. Ellis states in his patent that the user device symbolized by item "10" of figure 1 is either a telefax machines, modems, or other end user equipment. Ellis goes on to that **"In interexchange carrier 14 is part of a telecommunication network 12 for typically handling long distance or toll telephone calls between user telephones 10."** Item 10 of figure 1 is a regular line telephone as indicated by diagram and specifications (Figure 1, Figure ). There is no mention of cell phones or wireless devices.



**FIG - 1**

Referring now to FIG. 1, there is depicted a pictorial representation of a typical network connection between single user telephones 10 and a telephone communication network 12. The network 12 may comprise a conventional wire telephone network as well as wireless, cellular and other forms of telecommunication networks. User telephones 10 may also refer to telefax machines, modems, and other end user equipment.

In interexchange carrier 14 is part of a telecommunication network 12 for typically handling long distance or toll telephone calls between user telephones 10. The interexchange carrier may be one of a number of conventionally available carriers, such as AT&T, MCI, etc. A plurality of bypass carriers 16 are also interposeable between the user telephones 10 for handling long distance or toll telephone calls in lieu of the interexchange carrier 14.

It is clear that when Ellis mentions the terms Wireless and Cellular in his patent, that he is referring to the type of communication network that his invention can work over, not the type of phone that his invention can work with. The one and only sentence in Ellis's entire patent that mentions cellular and wireless is talking about type of network that a call can be placed over: **"The network 12 may comprise a conventional wire telephone network as well as wireless, cellular and other forms of telecommunication networks."**(Col. 5 line 39 – line 41).

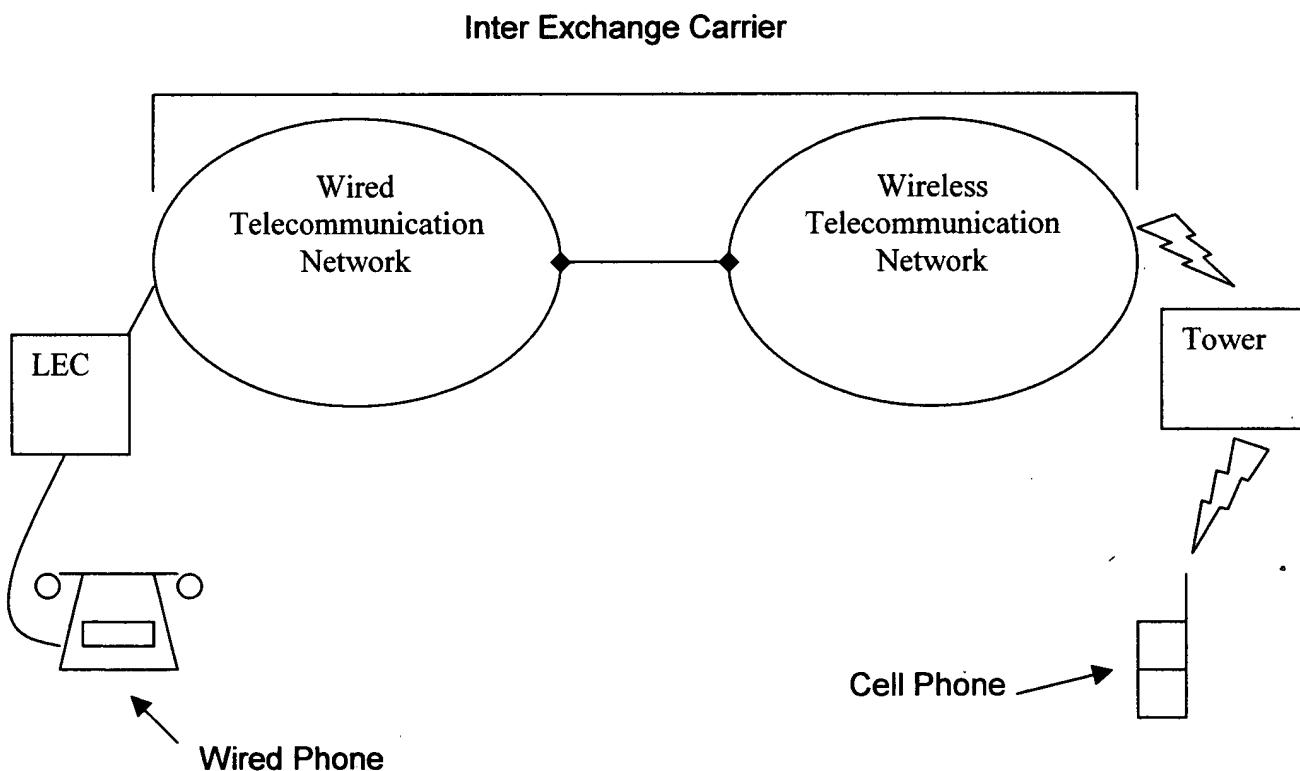
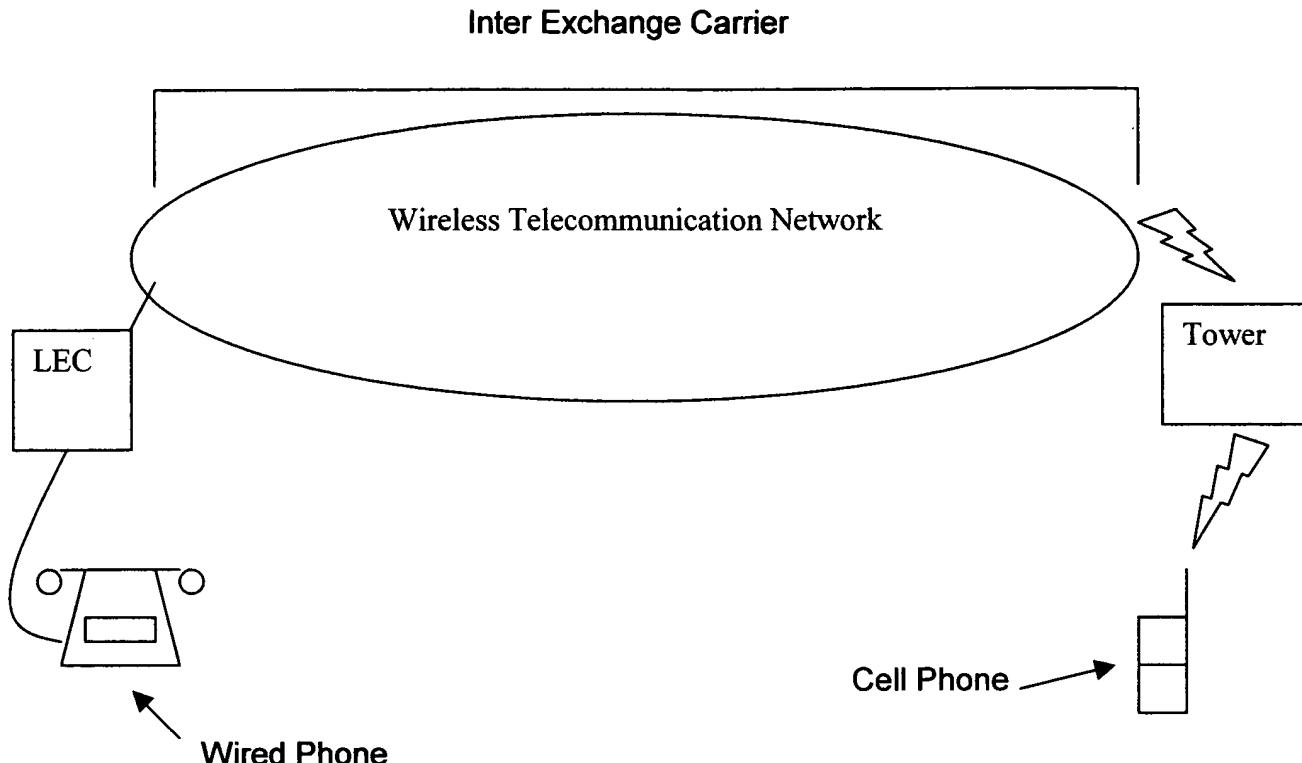


Illustration 1a



**Illustration 1b**

In **Illustration 1a**, the Applicant give a diagrammatic representation of what Ellis is talking about when he said "**The network 12 may comprise a conventional wire telephone network as well as wireless, cellular and other forms of telecommunication networks**" (Figure 1 and Col. 5 line 39 – line 41). In **Illustration 1a**, we have an outgoing call from a line phone to a wireless phone. The outgoing **Wired Phone** call is passed to the **LEC** (Local Exchange Carrier), then to an **Inter-Exchange Carrier** (wired telecommunication network), then it is passed to a wireless communication network that passed the call to the **cell phone Tower** that is nearest to the **Cell Phone**. The wireless / cellular phone get the call via the wired and wireless communication network. If the

outgoing wired call was an international call, or the receiver of the call was using a satellite phone, then the call would pass from a line telecommunication network to a possible satellite telecommunication network. Ellis's indicates this when he said "**and other forms of telecommunication network**", indicating that his invention would be able to re-route any outgoing line call to another phone just like a normal Inter-Exchange Carrier.

In **Illustration 1b**, the Applicant give a diagrammatic representation of what Ellis is talking about when he said "**The network 12 may comprise a conventional wire telephone network as well as wireless, cellular and other forms of telecommunication networks**" (Figure 1 and Col. 5 line 39 – line 41). In **Illustration 1b**, we have an outgoing call from a line phone to a wireless phone. The outgoing **Wired Phone** call is passed to the **LEC** (Local Exchange Carrier), and then it is passed to a wireless communication network that passed the call to the cell phone **Tower** that is nearest to the **Cell Phone**. The wireless / cellular phone get the call via the wired and wireless communication network.

A cellular / wireless device is not part of a communication network, Ellis's clearly indicates that what he termed a communication network to refer to inter-change carriers, when he provided example: MCI, AT&T, et cetera (Col. 5, line 46 – line 48).

(LEC) A company allowed to handle local calls following the break-up of

the Bell system in the US by anti-trust regulators. These vary from Regional Bell Operating Companies (RBOC) through to small independents such as Farmers Cooperative.

Local exchange carriers are not allowed to handle long-distance traffic. This is handled by inter-exchange carriers (IXC) who are not allowed to handle local calls. Since a cellular or wireless device can make local calls they cannot be part of an inter-exchange carrier (IXC) network, therefore Ellis's invention was not teaching on enabling a cellular phone / wireless device to re-route calls when it mention cellular and wireless communication network.

Ellis clearly indicate what other telephonic devices in addition to a wired phone his patented device can be utilized with: telefax machine, modems, and other equipment "**User telephones 10 may also refer to telefax machines, modems, and other end user equipment (Col. 5, line 41 – line 43).**" If Ellis had intended to applied his invention to wireless device he would have said so. According to the FCC (Federal Communication Commission) wireless phone are separate from that of the wired phone system.

Patent cannot be sometimes thing, what it does mush hold true for all of the aspects of its cited teaching all the time. Ellis's cites wired, wireless, and other forms of telecommunication networks, is not anticipatory to the Applicant's invention. Satellites can form a telecommunication networks, and there is no on hook and / or off hook equivalence in either a cell phones, or satellite base station. Therefore, Ellis must be talking about a communication network when he

mentions cellular and wireless telecommunication network, and about wired phones when he mentions re-routing an outgoing call.

To say that a wireless phone / cellular device is part of telecommunication network it accesses, is to say that my wireless laptop is part of the Internet. The Internet is a communication network that can be accessed by a wireless laptop, but laptop is not considered part of the communication network. That is why we have such terms as "Internet Access" and "Logging On", because we are access a network. Therefore, a cellular telecommunication network is not part of a cell phone, nor is a wireless telecommunication network part of a wireless device. Ellis's patent clearly indicates that there are several types of networks in a telecommunication system, and that his patent only affects one of them (Col. 5, line 43 – line 51 and Figure 1). Ellis's patent affects the "Inter-Exchange Carrier", and is transparent to the LEC (Col. 5, line 35 – line 43 and Col. 5, line 43 – line 51).

Ellis goes on to say that his invention is for regular telephone using a regular communication network (Col. 5 line 23 – line 24 and Col. 5 line 35 – line 38). Further proof of Ellis's invention being limited to a conventional line (wired) phone is in his description of the phone have the ability to switch between Pulse and Tone dialing mode. No cellular or wireless device has ever used Pulse dialing (Col. 5 line 61 – Col. 6 line 6).

**The present invention is an apparatus for automatically providing prestored bypass dialing. The apparatus is embodied in a telephone**

**having conventional features as shown in FIG. 2. By way of example only, the telephone 20 includes a keypad 21 formed of a plurality of individual, depressible push buttons 22. The push buttons are associated with certain numbers or letters as well as indicia, such as a pound sign and a star. On the side of the phone housing or another convenient location, a ringer switch 23 is provided to control the telephone ringer between high and low volume levels or no ring. Also mounted on the side of telephone housing is a dialing mode switch 24 which selects either Pulse or Tone dialing mode**

The fact the Ellis's patent require the presence of a long distance indicator in the form of a "1" in the lead position of the dialed phone number to initiate the alternate routing of the outgoing phone call (Col. 3 line 19 – line 22 and Col. 9 line 26 – line 35) clearly demonstrates that his system is would work only in a wired / line telephone system. Ellis's long distance indicator approach would have worked at the time of the filing of the patent: local call were seven digits long (i.e. 123 – 1234) and long distance calls were ten digits long (i.e. 1[212] 123 –1234). At the time of the filing of Ellis's patent a caller was required to dial a "1" prior to entering the area code of a long distance phone number. The long distance indicator approach of Ellis's patent limits its teaching to a line phone system, and would have no value to a wireless phone system. Ellis's patent has nothing to offer anyone attempting to adapt his patent to that of a wireless phone system. There is no reasoning for anyone skilled in the art to even look at Ellis's

patent for guidance in developing a methodology for re-routing call in a cellular or wireless device. There is no mention of a wireless or cellular device in Ellis's patent: neither the specification nor the claims contain a single reference re-routing an outgoing call to a wireless device. In fact the expression "cell phone" or "wireless device" does not appear once in the entire patent.

All phone numbers dialed on a cellular / wireless device require an area code preceded by a "1" in the lead position regardless of them being local or long distance.

Another aspect of Ellis's patent that limits its application to only line (wired) phone is its internal utilization of tones to effect the re-route of an outgoing phone call to an alternate path number (Col. 8 line 54 – line 56). Ellis's patent clearly states the tones are used to re-route an outgoing call "**In a typical embodiment, the tones generated to the telephone communication network would be 10-XX-XXX-1.**" The direct introduction of tones into a communication network is mainly a feature of a line phone. Cell phones are digital in nature and tend to transmit information in an electronic signal format. Ellis's patent offers no teaching on generating or using electronic signals to transmit information either internally to the phone or out to the communication network. Ellis's patent does offer any teachings on how to re – route an outgoing phone call in a wireless or cellular device. The fact that Ellis's patent does not offer any teaching on re – routing a call made by a wireless or cellular device, it should not be able to block the Applicant's patent application.

Ellis's patent further limits its teaching to that of a line phone by stating that utilization involve lifting the hand set and listing for a dial tone (Col. 8 line 51 – line 52). Cell phones do not have a handset to be lifted and there is no dial tones in a cellular or wireless device. These features are attributes of a line phone only, and as such they serve to limit the scope of Ellis's patent to line phone.

**Specifically, the user in a typical dialing sequence, after lifting the hand piece and obtaining a dial tone (Col. 8 line 51 – line 52)**

The fact that Ellis's patent is limited to line phone, should negate it be used to block the Applicant's patent application. The fact that Ellis's patent deals with line phone should also negate its value in helping someone skilled in the art in developing a wireless version of Ellis's patent.

Another aspect of Ellis's patent that is problematic is its requirement for the phone manufacturer to provide technology not yet in existence. Ellis's patent in one embodiment requires the telephone manufacturer to provide removable processors that can be swapped-out by the customer (Col. 8, line 18 line – line 20). Another alternative is for the telephone manufacturer to develop dip-switches that will allow the phone user to program for an alternate carrier (Col. 8, line 21 – line 24).

Ellis's patent mentions of a cellular or wireless telecommunication network dose not inherently make the employment of his patent in cellular devices or wireless phone. The mention of cellular or wireless telecommunication network is intended to indicate that the wired phone re-routed outgoing calls can travel over either of the networks. The entire patent is geared toward a wired phone, and wired phone technology. The one time statement is nothing but a statement that the outgoing call from the wired phone can travel over any type of communication network to reach its destination. There is no background / support evident in the patent specification that teach on employment of Ellis's invention in a wireless / cellular device.

It is stipulates that the Examiner must provide ration-ale or evidence tending to show inherency (MPEP 2112 iv). To show inherency, it must be shown that the extrinsic evidence 'must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by a person of ordinary skill. Evidence of wireless devices or cellular phones being part of Ellis's patent is lacking, the mention telecommunication network is explain by both the Applicant in his response and by Ellis's in his indication of AT&T and MCI as Inter-Exchange Carriers (Figure 1 and Col. 5, line 44 – line 51). It would be apparent to a person of ordinary skills that Ellis's patent is able to re-route a call from a line phone over any type of "Inter-Exchange Carrier" to a destination phone. The re-routing ability doses not invoke anticipation or inherency when viewing the Applicant's invention in light of

Ellis's invention. In fact there is no reason for anyone to look at Ellis's patent and associate it with the Applicant's invention.

Inherency may not be established by probabilities or possibility. The mere fact that a certain thing may result from a given set of circumstance is not sufficient (MPEP 2112 iv: Oelrich, 666 F.2d 578, 581-82, 212 USPQ 323, 326 (CCPA 1981)). It is probabilistic that anyone reading Ellis's patent and encountering a single line mentioning "wireless and cellular telecommunication network" would associate cellular phone or wireless device with the taught methodology. Since there is no definite association, there is no inherency in Ellis's patent and the Applicant's invention.

Also, "[a]n invitation to investigate is not an inherent disclosure" where a prior art reference "discloses no more than a broad genus of potential applications of its discoveries." *Metabolite Labs., Inc. v. Lab. Corp. of Am. Holdings*, 370 F.3d 1354, 1367, 71 USPQ2d 1081, 1091 (Fed. Cir. 2004) (explaining that "[a] prior art reference that discloses a genus still does not inherently disclose all species within that broad category" but must be examined to see if a disclosure of the claimed species has been made or whether the prior art reference merely invites further experimentation to find the species.) Clearly, phones are a broad category of communication devices of which cellular and wireless device are a subset. The mentioning of re-routing a call over a variety of wired, wireless/cellular, or other telecommunication network in a patent that expressly teaches on a wired devices, can not be considered to be inherent with regards to wireless device / cellular phones under the above stated rule on

inherency. There association would be speculative in nature because there is nothing to draw a direct definitive association between the two, as such Ellis's patent cannot be considered inherent the Applicant's invention.

The Applicant has illustrated what was intended by Ellis when he used the phase "**The network 12 may comprise a conventional wire telephone network as well as wireless, cellular and other forms of telecommunication networks.**"

The Applicant has shown the Ellis's was limiting his discussion to "Inter-Exchange Carrier" by his indicated Figures (Figure 1, Item 12) and specifically cited examples of Inter-Exchange Carriers AT&T and MCI. Since, the only supporting evidence is Figure 1 (line phone and Inter-Exchange Carriers) it stands to reason that cell phone and wireless devices are not inherent to Ellis's patent. Therefore, the Applicant's invention cannot be said to be anticipated by or inherent to Ellis's patent (invention). Claims 46 – 90 are allowable.

**Listing of Claims:**

**Claim 46 (previously amended): A method for routing calls on a wireless device to a discount telephone service provider, comprising:**

method for collecting the digits of a dialed phone number by monitoring the keypad of a wireless device to detect electrical signals indicating which buttons were pressed;

method for storing to memory the digits corresponding to the buttons that were pressed on the wireless device keypad;

method for determining whether an outgoing call from a wireless device is a discount call based on analysis of the leading dialed digits of said call;

method for performing said analysis at the wireless device;

method for transparently dialing the phone number for a discount telephone service provider and the digits corresponding to said outgoing long distance call.

**Claim 47 (previously amended): The method according to claim 46, further comprising:**

method for detecting the electrical signals generated by pressing buttons on a wireless device keypad and determining if the leading digits of a dialed phone number correspond to a predetermined sequence of digits predetermined to be a common to a discountable call;

method for performing said determination, detection, and dialing from an external unit attached to the wireless device.

**Claim 48 (previously amended):** The method according to claim 46, wherein the determining whether a discount call is made is accomplished by software running on a microprocessor located inside of the wireless device that determines whether the leading digits that encode the area code of an outgoing call meets a predetermined sequence of digits.

**Claim 49 (previously amended):** The method according to claim 47, wherein the determining whether a discount call is made is accomplished by determining whether the leading electrical signals generated by dialing a phone number on the wireless device's keypad encodes for the digits associated with an international call.

**Claim 50 (previously amended):** The method according to claim 47, further comprising:

method for automatically determining whether an access code is required to effectuate routing a call through a discount service provider; and

method for automatically providing said access code when said code is required.

**Claim 51 (original):** The method according to claim 46, wherein the discount call is an international call.

**Claim 52 (original):** The method according to claim 46, wherein the discount call is not a special service call, toll free call, or a local call with an area code.

**Claim 53 (previously amended):** The method according to claim 47, further comprising:

method for transparently providing an access code for a discount service provider by generating electrical signals similar to pressing of keys on a wireless device keypad.

**Claim 54 (previously amended):** A method for routing calls through a discount telephone service using a wireless device, comprising:

monitoring the activity of a cell phone keypad for detecting outgoing call activity;

determining whether the outgoing call is a potential discount call;  
determining whether the outgoing call is a potential discount call is accomplished by detecting a predetermined sequence of digits in a predetermine position of the dialed phone number of the outgoing call;

collecting the digits corresponding to the discount call; and  
dialing the phone number for accessing a discount telephone service provider and the digits corresponding to the discount call.

**Claim 55 (previously amended):** The method according to claim 54, further comprising:

effectuating a re-set state after the initial phone number is entered but not sent out over the communication network;

dialing the phone number of the discount service provider; and

dialing the digits of the detected outgoing discountable phone number.

**Claim 56 (previously amended):** The method according to claim 54, further comprising:

method for determining whether an access code is required to effectuate said routing; and transmitting said access code through a wireless device when said code is required by generating electrical signals similar to the pressing of keypad buttons corresponding to the digits of the needed code.

**Claim 57 (original):** The method according to claim 54, wherein the potential discount call is an international call.

**Claim 58 (previously amended):** A system for automatically routing calls through a discount telephone service using a wireless device, comprising:

a means for determining whether an outgoing call on a wireless device is a potential discount call;

a means for collecting the digits corresponding to the outgoing call by monitoring the wireless device keypad for activity; and

a means for dialing the access number for a discount telephone service provider and the digits corresponding to the outgoing call by generating electrical

signals the correspond to the buttons on the keypad in a manner that produces the phone number of the outgoing call and the discount service provider.

**Claim 59 (previously amended):** The system according to claim 58, further comprising:

means for determining whether the leading detected dialed digits match a predetermined number of DTMF tones in a predetermine sequence that corresponding to a potential discountable call.

**Claim 60 (previously amended):** The system according to claim 59, wherein the means for determining whether a discount call is being made is accomplished by detecting the dialed digits as electrical signals from the keypad of the wireless device and determining whether they meets a predetermined sequence of digits.

**Claim 61 (previously amended):** The system according to claim 59, wherein the means for determining whether a discount call is being made is accomplished by determining if the first dialed digits are associated with a predetermine sequence of digits of an international phone number.

**Claim 62 (previously amended):** The system according to claim 59, further comprising:

means for determining whether an access code is required to effectuate said routing; and

means for providing said access code to the discount service provider when said access code is required.

**Claim 63 (previously amended):** The system according to claim 58, wherein the potential discount call is an international call.

**Claim 64 (previously amended):** The system according to claim 59, wherein it is determined by the leading dialed digits whether the potential discount call is not a special service call or toll free call.

**Claim 65 (previously amended):** The system according to claim 59, further comprising:

means for selecting a discount service provider phone number and the required access code from a plurality of service provider and their access code; and

means for dialing the selected discount service provider and any required access code by generating electrical signals similar to the pressing of keypad buttons corresponding to the digits of the discount service provider phone number, the dialed phone number, and the access code if required.

**Claim 66 (previously amended):** A system for routing calls through a discount telephone service, comprising:

means for monitoring a cell phone function keys for outgoing call activity;

means for determining what digits are dialed on a cell phone keypad in the making of an outgoing call;

means for determining whether the outgoing call is a potential discount call;

means for determining whether a predetermine number of the leading dialed digits of said outgoing call are of a known sequence of digits associated with a discountable call; and

means for routing the outgoing call to a discount service provider by re-setting the phone before dialing the access number for a discount telephone service provider and the digits corresponding to the said outgoing call.

Claim 67 (original): The system according to claim 66, further comprising:

means for determining whether an access code is required to effectuate said routing; and

means for transmitting said access code through the cell phone when said code is required.

Claim 68 (original): The system according to claim 66, wherein the potential discount call is an international call.

Claim 69 (original): The system according to claim 66, wherein the potential discount call is not a special call or a toll free call.

Claim 70 (previously amended): A system for routing calls through a discount

telephone service using a wireless device, comprising:

    a processor configured for identifying electrical signals encoding digits associated with an outgoing telephone number by monitoring activity on the wireless device keypad and storing observed activity in memory;

    a processor configured for analyzing one or more of the electrical signals encoding the digits generated by pressing a key on the wireless device keypad, and configured for determining whether a potential discount call is being made;

    memory configured for collecting and storing the dialed telephone number; and

    a processor configured for generating electrical signals corresponding to the phone number for a discount service provider, an access code if needed, and the outgoing dialed telephone number.

**Claim 71 (previously amended):** The system according to claim 70, wherein the processor is further configured for comparing a predetermined numbers of digits of an outgoing call in order to determine whether the outgoing telephone number is a discount call.

**Claim 72 (previously amended):** The system according to claim 71, wherein the leading digits of an outgoing call are represented as electrical signals that encodes for the digits that indicate the call is international or long distance.

**Claim 73 (original):** The system according to claim 70, wherein the leading

electrical signals of an outgoing call represent the digits that encode an area code of a long distance phone number.

**Claim 74 (original):** The system according to claim 71, wherein the processor is further configured for determining whether an international phone call is being made prior to the action of a wireless device user convey the dialed phone number to the communication network.

**Claim 75 (original):** The system according to claim 71, wherein the processor is further configured for determining whether an access code is required to effectuate said routing, and for transmitting said access code stored in memory over the wireless device when said code is required.

**Claim 76 (original):** The system according to claim 70, wherein the potential discount call is an international call

**Claim 77 (original):** The system according to claim 70, wherein the potential discount call is not a special type call or toll free call.

**Claim 78 (previously amended):** The system according to claim 71, wherein a processor is located in an router located externally to but in communication with a wireless device is further configured for choosing an access number from a plurality of access numbers for a discount service provider, and for dialing the

selected access number associated with a discount service provider, said dialing is effectuated by generating electrical signals that corresponds to the pressing buttons on a wireless device keypad .

Claim 79 (previously amended): A system for routing calls through a discount telephone service, comprising:

an array of Pic I/O pins configured for monitoring a cell phone activity for outgoing call, said array comprising of at least one Pic I/O pin;

a DTMF encoder configured for detecting the DTMF tones associated with an outgoing telephone number, a processor configured for determining whether the outgoing call is a discount call by determining whether the predetermined number of dialed digits comprises a predetermined sequence of one or more DTMF tones that are dialed by a user; a memory configured for storing the telephone number corresponding to the discount call; and a DTMF generator configured for dialing the phone number for a discount service provider and the outgoing telephone number.

Claim 80 (previously amended): The system according to claim 79, wherein the processor is further configured for determining whether an access code is required to effectuate said routing, and for transmitting said access code over the cell phone when said code is required by generating electrical signals that encode the digits of said access code.

**Claim 81 (original): The system according to claim 79, wherein the potential discount call is an international call.**

**Claim 82 (original): The system according to claim 79, wherein the potential discount call is not a special type call or a toll free call.**

**Claim 83 (original): The system according to claim 66, wherein a system for routing call to a discount service provider is integrated into a wireless device.**

**Claim 84 (original): The system according to claim 79, wherein a system for routing call to a discount service provider is attaches to a wireless device.**

**Claim 85 (previously amended): Located within a wireless device, computer executable software code stored on a computer readable medium, the code for routing calls through a discount telephone service using said wireless device, comprising:**

code for determining whether an outgoing call on a wireless device is a discount call;

code for collecting the digits corresponding to the discount call by monitoring the keypad of a wireless device for activity;

code for dialing the number for a discount telephone service provider and the digits corresponding to the discount call by having a processor capable of storing the dialed phone number in memory and being able to generate electrical

signals that matches both the of the discount service provider phone numbers and the outgoing call phone number; and

code for providing an access code if needed.

**Claim 86 (previously amended):** A computer readable medium having computer executable software code stored thereon, the code for automatically routing calls through a discount telephone service using a wireless device, comprising:

code for automatically determining whether an outgoing call on a wireless device is a discount call;

code for collecting the digits corresponding to the discount call by monitoring the keypad of a wireless device for activity; and

code for dialing the access number for a discount telephone service provider and the digits corresponding to the discount call.

**Claim 87 (previously amended):** A programmed computer for routing calls through a discount telephone service using a wireless device, comprising:

a memory in a wireless device having at least one region for storing computer executable program code; and

a processor for executing the program code store in said memory, wherein the program code includes:

code for determining from the sequence of the leading digits whether an outgoing call is a discount call;

code for collecting the digits corresponding to the discount call by

monitoring the activity of the keypad of the wireless device; and  
code for dialing the access number for a discount telephone service provider and the digits corresponding to the discount call by generating the electronic signals that correspond to digits dialed on a wireless device keypad.

**Claim 88 (previously amended):** Computer executable software code stored on a computer readable medium located in a wireless device, the code for routing calls through a discount telephone service, comprising:

code for monitoring the activity of a cell phone keypad for outgoing call activity;  
code for determining whether the outgoing call is a potential discount call;  
code for detecting the DTMF tones corresponding to a predetermined number of DTMF tones, wherein the determining whether the outgoing call is a potential discount call is accomplished by determining whether one or more of a predetermined number of DTMF tone meets a predetermined sequence of the DTMF tones;  
code for collecting the digits corresponding to the discount call; and  
code for dialing the number for a discount phone service provider and the digits corresponding to the discount call.

**Claim 89 (previously amended):** A computer readable medium having computer executable software code stored thereon, the

code for routing calls through a discount telephone service, comprising:

code for monitoring the activity of a cell phone keypad to determine whether an outgoing call is being made;

code for determining whether the outgoing call is a potential discount call by determining whether the outgoing call contains a predetermine number of DTMF tones in a predetermined sequence;

code for collecting the digits corresponding to the discount call;

code for determining whether all of the numbers associated with the discount call have been collected within a predetermined polling period; and

code for dialing the access number for a discount telephone service provider and the digits corresponding to the discount call.

**Claim 90 (previously amended): A programmed computer for routing calls through a discount telephone service, comprising:**

a memory in a wireless device having at least one region for storing computer executable program code; and

a processor in a wireless device for executing the program code stored in memory, wherein the program code includes: code for monitoring a wireless device phone activity for outgoing call;

code for determining whether the outgoing call is a potential discount call;

code for detecting the DTMF tones corresponding to a first predetermined number of DTMF tones, wherein the determining whether the outgoing call is a potential discount call is accomplished by determining whether at least one or more DTMF tones meets a predetermined sequence of the DTMF tones;

code for collecting the digits corresponding to the discount call; and  
code for dialing the access number for a discount telephone service  
provider and the digits corresponding to the discount call.

## SUMMARY

The Applicant's patent application should not be challenged by Ellis's patent being that it fails to meet the requirement for Anticipation or Inherency. Ellis's patent can not be said to anticipate the Applicant's invention being that it does not contain all of the elements of the invention: i.e. wireless devices or cellular phones. Ellis's patent cannot be said to be inherent to the Applicant's invention, because the Applicant clearly indicate two interpretations that (illustration 1a & 1b) are 100% in accord with the specifications, artwork, and claims of said patent. If the examiner's perspective is a possible interpretation of Ellis's patent, meant to include wireless and cellular phones, then it must be considered as a single possibility among other choices. An MPEP (MPEP 2112 iv) clearly states that for inherency to be valid there can be no possibility involved.

***"In re Oelrich, 666 F.2d 578, 581-82, 212 USPQ 323, 326 (CCPA 1981).***

***"To establish inherency, the extrinsic evidence 'must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.'"***

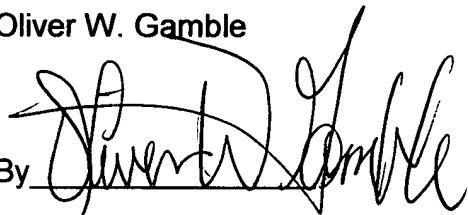
App. No. 09/901,600 - Inventor: Oliver W. Gamble  
Application Filed On: July 11, 2001  
Examiner: Joy K. Contee - Art Unit 2686

Several supporting legal cases are cited in support of negating these invention on grounds that they fail to anticipate, because they do not contain all of the elements found in the claims of the Applicant's claims. In **HYBRITECH INCORPORATED** it was stated that "*[HN9] It is axiomatic that for prior art to anticipate under 35 U.S.C.S. § 102 it has to meet every element of the claimed invention, and that such a determination is one of fact.*" Ellis's patent does not show all of the elements of the Applicant's patent, therefore Ellis's patent cannot be said to anticipate the Applicant's invention. The Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

Oliver W. Gamble

By

A handwritten signature in black ink, appearing to read "Oliver W. Gamble".

Oliver W. Gamble

Inventor

October 18, 2005